IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 18578 of 2005(J)

PETITIONER:

B.P.HARIHARAN, ASSISTANT GRADE I DEPOT,
FOOD CORPORATION OF INDIA, REGIONAL OFFICE,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT. N. SANTHA,
SRI. PETER JOSE CHRISTO.

RESPONDENTS:
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1. **FOOD CORPORATION OF INDIA,**
   REPRESENTED BY ITS CHAIRMAN, HEAD QUARTERS,
   FCI 16-20, BARAKHAMBA LANE, NEW DELHI -110 001.

2. **THE ZONAL MANAGER, FOOD CORPORAITION OF**
   INDIA, ZONAL OFFICE, 3 HADDOWS ROAD, CHENNAI
   - 600 006.

3. **THE SENIOR REGIONAL MANAGER,**
   FOOD CORPORATION OF INDIA,
   REGIONAL OFFICE, THIRUVANANTHAPURAM- 695 004.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, FCI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18578/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RELEVANT EXTRACT OF THE SENIORITY LIST OF ASSISTANT GRADE I (DEPOT) AS ON 30/06/2001, PUBLISHED BY THE FCI.

EXT.P.2: COPY OF THE REPRESENATION SUBMITTED BY THE PETITIONER BEFORE THE R.2. DTD. 24/01/1997.

EXT.P.3: COPY OF THE O.O. NO. 357/2002/EI DTD. 08/10/2002 OF THE DEPUTY MANAGER (PER) FOR ZONAL MANAGER (S).

EXT.P.4: COPY OF THE OFFICE ORDER NO. ESTT. 3 (1)/2003/DMT DTD. 18/10/2003 OF THE DISTRICT MANAGER, FCI, THIRUVANANTHAPURAM.

EXT.P.5: COPY OF THE OFFICE ORDER NO. ESTT. 3 (1)/2003/DMT DTD. 18/10/2003 OF THE DISTRICT MANAGER, FCI, THIRUVANANTHAPURAM.

EXT.P.6: COPY OF THE O.O. NO. 153/2004/ESTT. I DTD. 15/03/2004 OF THE ASST. MANAGER, FCI.

EXT.P.7: COPY OF THE COVERING LETTER NO. ESTT. 2 (7)/2002.II DTD. 27/03/2004 OF THE R.3.

EXT.P.8: COPY OF THE LETTER NO. E.I/2 (2)/2003 DTD. 27/05/2004 OF THE R.2. ADDRESSED TO THE R.3.

EXT.P.9: COPY OF THE CIRCULAR NO. EI/37 (2)/2001 DTD. 07/10/2002 (CIRCULAR EP 19 2002 27) OF THE MANAGER (P&IR).

EXT.P.10: COPY OF THE REPRESENTATION SUBMITED BY THE PETITIONER BEFORE THE R.2. DTD. 22/02/2005.

EXT.P.11: COPY OF THE REMINDER DTD. 06/05/2005.

EXT.P.12: COPY OF THE ORDER NO. O.O. NO. 451/2001/EI DTD. 26/11/2001 OF THE R.2.

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE CIRCULAR NO. 40/90 DTD. 22/10/1990 ISSUED BY THE HEADQUARTERS.

W.P.(C). NO. 18578/2005:

EXT.R3.B: COPY OF THE CIRCULAR NO. 43/1997 (NO. E.P. 37 (2)/97 DTD. 27/11/1997 ISSUED BY THE R.1- HEADQUARTERS.

EXT.R3.C: COPY OF THE CIRCULAR NO. EP/37 (2)/2001 DTD. 07/10/2002 ISSUED BY THE R.1.

EXT.R3.D: COPY OF THE HEADQUARTERS CIRCULAR NO. EP/37 (2)/2001/596 DTD. 28/10/2004/ 02/11/2004.

EXT. R3.E: COPY OF THE HEADQUARTERS CIRCULAR NO. ESTT. 1/12 (9)/2004 DTD. 23/06/2005.

//TRUE COPY//

prv.

Antony Dominic, J.

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W.P(C).No.18578 of 2005

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Dated this the 3rd day of August, 2007.

JUDGMENT

Petitioner has filed this Writ Petition seeking to quash Ext.P6 to the extent it excludes him and Ext.P8 order by which his representation for promotion to the post of Assistant Manager (Depot) under the physically handicapped quota has been declined. It is seen that the petitioner is a handicapped person with 40% permanent disability which is not disputed by the respondents as well.

2. He entered service as Assistant Grade III (Depot) on 8.1.1976 and was thereafter promoted as Assistant Grade II and is presently working as Assistant Grade I. According to him, although he is entitled to be promoted to the post of Assistant Manager (Depot) in the normal channel of promotion, his claim under the physically handicapped quota has been negatived by the respondents and it is in this background that the petitioner sought to quash Ext.P6 and P8 as stated above.

3. Respondents have filed a counter affidavit. It is stated in the counter affidavit that in terms of Ext.R3(a) Circular No.40/90 dated 22.10.1990 issued by the Headquarters of Food Corporation of India, reservation that is available to the physically handicapped category is as per the provisions contained in the Office Memorandum No.36035/8/89/Estt. (SCT) dated 20.11.1989 issued by the Department of Personnel and Training, Government of India. It is stated that the said Circular provided that within Group 'C' reservation will be provided to the three categories of physically handicapped persons, viz, visually handicapped, hearing handicapped and the orthopaedically handicapped. According to them, so far as the petitioner is concerned, he has permanent disability due to polio Residual Paralysis and he does not come within any of those three categories enumerated in the Circular or Office Memorandum mentioned above. It is also stated in paragraph 9 of the counter affidavit that the Headquarters issued Circular dated 7.10.2002 withdrawing the benefit of promotion for physically handicapped from Category III to Category II. Petitioner has no case that he comes within the purview of Ext.R3(a) or the Office Memorandum

mentioned above and if that be so, the petitioner cannot succeed in this Writ Petition. In addition to this, the fact that benefits extended through aforesaid Circulars in this regard have also been withdrawn by Circular dated 7.10.2002 in which case, petitioner cannot assert any further claim for promotion in that category. In the above circumstances, I am not in a position to sustain the claim of the petitioner for promotion to the post of Assistant Manager (Depot) in the physically handicapped quota.

4. However, petitioner has a case that even according to the respondents, he is entitled to the benefits of reservation in the matter of promotion to the post of Assistant Grade II and Assistant Grade I and that these benefits have not been granted. According to him, if these promotions were granted in time, he would have been senior in the Category of Assistant Grade I and would have earned promotion to the higher posts without reservation and in the normal channel. This aspect is not seen to have been specifically dealt with in the counter affidavit. Taking into account above grievance of the petitioner, I direct the second respondent to consider the eligibility of the petitioner to have been extended reservation in the physically handicapped

quota in the matter of his promotion to the post of Assistant Grade II and Assistant Grade I with effect from the dates on which he should have been given those benefits. On such examination, if he is found to be eligible, consequential benefits should also be extended to him. The matter shall be dealt with by the second respondent within a period of six months from the date of receipt of a copy of this judgment.

Writ Petition is disposed of as above.

Antony Dominic,
Judge.

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